



REQUEST FOR PROPOSALS (RFP)

PROFESSIONAL SERVICES FOR PREPARATION OF COMPREHENSIVE WATER AND WASTEWATER (INCLUDING NONPOTABLE WATER) RATE AND USER FEE STUDIES

**CITY OF BRENTWOOD – PUBLIC WORKS DEPARTMENT
150 CITY PARK WAY
BRENTWOOD, CA 94513**

KEY INFORMATION

Question Deadline:	December 13, 2012
Revision/Addenda Deadline:	December 14, 2012
Submittal Deadline:	5:00 P.M. December 18, 2012
Contact:	Miki Tsubota, Assistant Director of Public Works/Engineering (925) 516-5420 engmessages@brentwoodca.gov



CITY BRENTWOOD – PUBLIC WORKS DEPARTMENT

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PROFESSIONAL SERVICES FOR PREPARATION OF COMPREHENSIVE WATER AND WASTEWATER (INCLUDING NONPOTABLE WATER) RATE AND USER FEE STUDIES

BACKGROUND

The City of Brentwood (“City”) operates and maintains 7 groundwater wells, a surface water treatment plant, and distribution system supplying over 9 million gallons daily. In addition, the City operates and maintains a wastewater collection and treatment system currently treating approximately 3.5 million gallons daily. Both systems service over 16,000 residential and non-residential customers. Non-potable water is delivered from two sources; reclaimed wastewater and Sacramento-San Joaquin River Delta, providing an additional 1 million gallons daily. Accounting for water and wastewater services are through separate enterprise funds, wherein the cost of providing services on a continuing basis is solely financed and recovered through user rate structures and fees.

The City’s current water rate structure consists of a monthly minimum charge based upon meter size plus a consumption charge consisting of multiple tiers. The City’s current wastewater rate structure is based on a monthly minimum charge plus a charge for units of water consumption. Water consumption is based upon average winter water usage to minimize the effects of irrigation. In addition, there is a monthly Sewer Lateral Maintenance charge. Non-potable water has one rate per unit of consumption.

Please see attached Water Enterprise Rate and Wastewater Enterprise Rate schedules for more detail.

The City has a five year Capital Improvement Plan that is updated annually and lists planned projects approved by the City Council as part of the annual budget. There are a number of studies and reports available for reference/ review including:

- Water Master Plan 2006
- Urban Water Management Plan 2010
- Wastewater Collection System Master Plan 2010
- Wastewater Facilities Plan 1997
- Wastewater Treatment Plant Expansion Study 2007.

The current Enterprise Rate Studies were performed in 2007 and the City desires to complete updated rate studies for use by July 1, 2013.

RFP PROJECT OVERVIEW

The City of Brentwood is accepting proposals from qualified consultant firms for the purpose of entering into a professional services agreement for a comprehensive analysis and rate alternatives for the city’s water, wastewater and non-potable utility systems. The studies are intended to achieve rate structures that will assure adequate revenues for operations, debt service and capital improvements, and to ensure that each service is operated on a self-

sustaining basis while considering the economic impact on the City's customers. The City will accept separate proposals for water and wastewater rate studies and reserves the right to select consultants to prepare either or both studies.

SCOPE OF WORK

The following is a preliminary scope of work. The consultant is requested to develop a detailed scope of work.

1. Review current City utility policies and procedures and regulatory requirements as they affect operations, capital projects, and revenue program requirements and rate structures.
2. Identify and summarize City's current rate structure, utility fees, operating expenses, capital costs, revenue stream, reserve funds, and billing program, including rate structure's suitability for sustaining cost recovery based on anticipated demands.
3. Analyze water and wastewater flow data for customer classes.
4. Evaluate pumping and delivery charges including analysis at individual pressure zones.
5. The study shall recommend rate structures that consider and make provision for the following factors:
 - A. Current and future cost of providing water and wastewater services in accordance with established and anticipated standards and regulations.
 - B. Projected demands.
 - C. Availability of supply (seasonal fluctuations and long-term availability).
 - D. Age and condition of system and need to fully fund immediate system maintenance and long-term capital improvements and replacements for supply, treatment, distribution, and storage infrastructure.
 - E. Funding requirements for all current long-term liabilities and debt obligations (bonds and loans).
 - F. Impact of current and future environmental regulations.
 - G. Impact of a watershed fire.
 - H. Assess anomalous customer situations (multi-unit apartments billed one sewer charge, mixed-use commercial/residential, etc.)
 - I. Coordination with the City's 5-Year Capital Improvement Program, current General Plan update, and other programs and studies.
 - J. Annual adjustment based on the Consumer Price Index.
 - K. Other impacts as identified.
6. Develop a user rate model that will be used to adjust rates and fees. Incorporate "what if" capacity to analyze such critical assumptions as change in operating costs, seasonality, extremely limited customer growth, amount and timing of capital projects, debt service, reserves, etc. The model must be user-friendly and provided with written operating procedures. The model will become the property of the City after staff is fully trained.
7. The recommended rate structures shall be consistent with industry practice and standards.
8. Rates shall include provision for an emergency rate structure to address loss of surface/groundwater supply, drought, catastrophic event, earthquake, etc.

9. Assess the interaction between water conservation elements of recommended rate structure, a fixed customer base, and their impacts on the ability to fund water and wastewater operations, as well as their impact on the economic wellbeing of the community.
10. The study shall provide at least three recommended rate alternatives based upon standard rate practice (increasing block rates, decreasing block rate, etc.) that meet the criteria above and make recommendation as to which one best meets the criteria. All alternatives shall assume a “base plus consumption” rate structure. Assess ease of communication associated with each recommended rate structure.
11. The benefits of any proposed modifications shall be weighed against the financial impacts on ratepayers, ranging from very low fixed-income customers to moderately affluent customers.
12. Justifications for any special classes of customers under the recommended rate structure shall be demonstrated.
13. The recommended rate structure shall result in no decrease in stability of the revenue streams to the Water and Wastewater Enterprise Funds, as compared to the current structure. Consideration should be given to funding past and future depreciation (replacement of facilities, infrastructure, and operating equipment).
14. The recommended rate structure and user fees shall be easy to administer and understand.
15. The City’s billing system should be able to handle any proposed rate structure.
16. The recommended rate structure shall be planned for a minimum of five (5) years.
17. Attend and facilitate sufficient meetings with Rate Study team, including City staff and City’s legal consultant throughout the study process to discuss findings, assumptions, methodology, and recommendations.
18. Attend and facilitate workshops and public meetings with the City Council and staff to discuss the proposed rate structure, policies, and alternatives.
19. Prepare responses to and incorporate any changes as a result of public feedback into a final report incorporating the criteria above.
20. Provide three (3) bound copies and one electronic copy of the final report in pdf format to the City. The Rate Structure Models developed shall also be made available to the City on CD, providing the ability to add, delete, and/or update information as needed. Consultant will train City staff on the use of the model and provide written operating procedures.

OBJECTIVES

- Examine the City’s water, sewer, and recycled water rates for equitability and sufficiency to meet the full revenue requirements of the City’s water and sewer enterprise operations, related infrastructure improvements, expansion, adequate staffing and replacement programs. The examination should review the long-term capital program for the water and sewer operations with consideration toward the City’s expected build

out and best management practices included in the City's Urban Water Management Plan.

- Rate analysis should be cost-based and financial modeling process of allocating costs should conform to generally accepted rate setting techniques.
- Ensure that the City is utilizing comprehensive overhead rates and accurately accounting for the true cost of providing various services within the City operations.
- Proposed rates should be easy to understand, easy to administer, and be legally defensible.
- Proposed rates should encourage conservation and customers pay their fair share for the services received.

Proposed rates should be stable in both their ability to provide adequate revenues to meet the City's financial, operating, capital, and regulatory requirements and the customer's perception of the rates from year to year

PROPOSAL FORMAT

The following information is to be submitted as part of the proposal. The proposal shall be a maximum of ten (10) single-sided pages in length, plus a detailed scope of services, project schedule, manpower loading matrix, hourly fee schedule, and appendix material. A typical proposal submittal may be as described below.

- **Transmittal Letter:** Include Consultant's understanding of this RFP and any key considerations for the Selection Committee to consider that are not covered in the proposal requirements. The Letter shall state that the proposal shall be binding for 60 days following the proposal date, and signed by an authorized member of the Consultant's firm.
- **Firm Experience:** Provide a general overview of Consultant's firm and the firm's experience at providing professional services associated with preparation of a Comprehensive User Fee and Rate Study and related models.
- **Firm's Approach to Project:** Consultant shall describe its approach in implementing and managing the project to successful completion. This includes how the Consultant shall meet the stated goals and objectives within the scheduled time of completion, the ability to work with a multi-disciplined project team, including the City staff, public officials, and the community, and other consultants if necessary.
- **Project Team:** Describe the Consultant's project team. Include the key individuals, including sub-consultants that will actually be responsible for the project's technical activities and for management of the project. Include a percent-time availability table for the project manager and key staff that will be working on the project. An organization chart should be provided showing the interaction of all the project team members, both City and Consultant.
- **References:** Provide at least three (3) references for the key individuals on the project team. This section should provide a short description of the project and role of Consultant's firm or staff members, and a specific contact person with telephone number and/or e-mail address. The Selection Committee will be focusing on project performance and will be requesting input as to the conformance with schedules and budgets.

- **Scope of Services:** Submit a detailed scope of services to be performed; including the preliminary criteria outlined hereinabove.
- **Man-power:** Submit a manpower-loading matrix indicating an estimate of hours and costs to complete the services as described in this RFP. The estimate should be an itemized staffing breakdown in spreadsheet form, indicating personnel classification, hours and costs from each Consultant team member for each work task, and indicating the hourly rate for each personnel category used.
- **Project Schedule:** Submit a proposed schedule incorporating required timeframes for public notification and implementation of rate schedules for July 1, 2013.

Appendix materials may be provided, but are not required other than specifically identified, in addition to the ten-page proposal limit. Appendix materials may not be reviewed and if submitted should be limited to resumes of proposed key project staff, previously published studies, articles, or reports relevant to the scope of work.

CONSULTANT SELECTION PROCEDURE

The Selection Committee, which will consist of City staff members and/or selected City officials or department representatives, will use the following criteria to evaluate the proposals:

1. Experience and qualifications of key project staff and availability. (20%)
2. Record of the firm and project manager in representing similar entities in preparing water and wastewater rate studies, development of rate structures, development of financing scenarios, preparation of revenue programs, preparation of user fee and overhead cost allocation studies, and preparation of and training in a computerized rate model. (25%)
3. Methodology to be employed in conducting the studies. Approach to work and how the project staff intends to meet the stated schedule and project goals. Proposal clarity in expressing the understanding of the City's needs and in defining a work plan for satisfying those needs. (25%)
4. Community relations, including evidence of sensitivity to citizen feedback and concerns. (10%)
5. Geographic location of the principal offices of the firm and proximity of the staff working on the studies to the City. Schedule compatibility with the City's needs. Availability to work with City staff. (10%)
6. Proposer's support organization and in-house quality control and quality assurance methods. (10%)

The Selection Committee may select one firm or interview elected firms and make the final selection. Negotiations may take place with the primary firm on the final scope of work, the final contract proposal, and the proposal price. If a contract cannot be satisfactorily negotiated, the negotiations with the designated consultant shall be terminated in writing and negotiations shall be started with the next highest rated consultant. The City reserves the right to reject any or all proposals and reserves the right to award this contract to the firm that best meets the requirements of the RFP.

PROPOSAL SUBMISSION DEADLINE

Deliver all proposals to the following on or before 5:00 P.M., Pacific Standard Time, **December 18, 2012.**

Miki Tsubota, Assistant Director of Public Works/Engineering
City of Brentwood
150 City Park Way, Second Floor
Brentwood, CA 94513

Five (5) hard copies and one (1) electronic copy in pdf format of the Submittal shall be made to the above address. The City accepts no costs or liability incurred in preparation and submission of proposals or in anticipation of a contract.

During the evaluation process, the City reserves the right to request additional information or clarification from Proposers, to waive informalities and irregularities, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation process. The City is under no obligation to return proposals. A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

SUBCONTRACTING

The Consultant selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, the primary Consultant assumes all responsibility for services required by a subcontractor. The proposal shall disclose and describe the use of subcontractors, including the specific scope of work.

AGREEMENT FORM

The City utilizes standard contract provisions for all professional and technical services agreements. Submission of a proposal constitutes acceptance of the agreement format and provisions as included as Attachment 1.

CONTACT INFORMATION

All requests, questions, or other communications about this RFP shall be made in writing to the City via e-mail, or U.S. Mail. Address all communications to the person listed below. To ensure that written requests are received and answered in a timely manner, e-mail correspondence is preferred. During the pre-proposal inquiry period, answers will be summarized and distributed to all firms without identifying the original source of the question. Firms should rely only on written statements issued by the person named below:

Miki Tsubota, Assistant Director of Public Works/Engineering
Email: engmessages@brentwoodca.gov
City of Brentwood, 150 City Park Way Brentwood, CA 94513
Phone: (925) 516-5420

PRE-PROPOSAL INQUIRY PERIOD

Consultants are encouraged to review the complete RFP and submit in writing any clarifying questions or information required to fully respond to the RFP. City Staff will distribute responses to all firms invited via e-mail, without identifying the original source of the question. In order to allow adequate time, Consultants are encouraged to submit any questions or clarifications **by December 13, 2012**. Any revisions/addenda to the RFP will be provided on the City website by **December 14, 2012** and it will be the Consultant's responsibility to obtain and incorporate those revisions into the RFP.

REFERENCE DOCUMENTS

Various documents to be used as reference may be accessed through the City's ftp site:
<ftp://ftp.brentwoodca.gov/pub/Rate%20Study%20RFP%20Reference%20Material/>

User name: ftplogin
Password: letmein

ATTACHMENT 1

EXISTING WATER AND WASTEWATER RATE SCHEDULES

Public Works

Water Fees

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
<u>Monthly Base Rate</u>							
5/8" or 3/4 Meter	\$15.98	\$16.46	\$16.95	\$17.46	\$17.99	\$18.53	\$19.08
1" Meter	24.07	24.69	25.43	26.19	26.98	27.79	28.62
1.5" Meter	47.84	49.38	50.86	52.39	53.96	55.58	57.24
2" Meter	79.79	82.30	84.77	87.31	89.93	92.63	95.40
3" Meter	132.08	148.13	152.58	157.16	161.87	166.73	171.73
4" Meter	212.80	213.97	220.39	227.00	233.81	240.83	248.05
6" Meter	425.70	444.40	457.74	471.47	485.61	500.18	515.19
<u>Consumption Charge</u> (per 1,000 gallons = 1 unit)							
Residential							
Tier 1: Units 1-10	\$2.50	\$2.58	\$2.65	\$2.73	\$2.81	\$2.90	\$2.99
Tier 2: Units 11-20	2.98	3.07	3.16	3.26	3.35	3.45	3.56
Tier 3: Units 21-30	3.57	3.68	3.79	3.90	4.02	4.14	4.26
Tier 4: Units 31+	4.16	4.28	4.41	4.55	4.68	4.82	4.97
Non Residential							
Tier 1: Units 1-10	\$2.50	\$2.58	\$2.65	\$2.73	\$2.81	\$2.90	\$2.99
Tier 2: Units 11+	2.98	3.07	3.16	3.26	3.35	3.45	3.56
Non Potable							
Tier 1: Units 1+	N/A	\$0.949	\$0.977	\$1.01	\$1.04	\$1.07	\$1.10

Water Service Standby Charge \$60.00

Water Disconnection Charge \$30.00

Water Meter Lock Actual Cost

Angle Meter Stop Actual Cost

Fireline 4" \$8.00

Fireline 6" \$12.00

Fireline 8" \$16.00

(Rate is based on \$2.00 per inch of the Fire Service Line)

Hydrant Meter Deposit \$2,500.00

Usage-Potable Water \$3.86 per 1,000 Gallons

Usage-Non Potable Water \$1.10 per 1,000 Gallons

Recycled Water Usage \$1.10 per 1,000 Gallons

Public Outreach/Educational Items (No Charge)

Waterwise Gardening CD No Charge for CD BY Mail - Actual Postage Cost

Irrigation Sign (Non-potable) Actual Cost Per (12" x 18") Sign

Public Works

Wastewater Fees

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Customer Category							
Residential							
Monthly Fixed Base Charge	\$8.93	\$9.60	\$10.32	\$11.09	\$11.93	\$12.82	\$13.78
Variable Rate per 1,000 gallons/month	3.11	3.34	3.59	3.86	4.15	4.46	4.80
Total Ceiling Rate (fixed base+variable)	31.78	34.16	36.73	39.48	42.44	45.62	49.05
New Service Rate (first year only)*	N/A	32.78	35.24	37.88	40.72	43.78	47.06
Non-Residential							
Monthly fixed charge	\$8.93	\$9.60	\$10.32	\$11.09	\$11.93	\$12.82	\$13.78
Variable Rate per 1,000 gallons/month							
Auto Sales and Repair	3.43	3.69	3.96	4.26	4.58	4.92	5.29
Barber & Beauty Shops	2.86	3.07	3.31	3.55	3.82	4.11	4.41
Bakery	8.78	9.44	10.15	10.91	11.73	12.60	13.55
Car Washes	2.95	3.17	3.41	3.66	3.94	4.24	4.55
Gas Stations	3.32	3.57	3.84	4.12	4.43	4.77	5.12
Grocery Stores	7.47	8.03	8.63	9.28	9.98	10.72	11.53
Hotels without Restaurants	3.42	3.68	3.95	4.25	4.57	4.91	5.28
Institutions, Churches, HOAs	3.02	3.25	3.49	3.75	4.03	4.34	4.66
Laundromats	3.11	3.34	3.59	3.86	4.15	4.46	4.80
Laundry, Commercial	4.03	4.33	4.66	5.01	5.38	5.79	6.22
Office Buildings, Banks	3.06	3.29	3.54	3.80	4.09	4.39	4.72
Restaurants	8.29	8.91	9.58	10.30	11.07	11.90	12.79
Retail Stores	3.11	3.34	3.59	3.86	4.15	4.46	4.80
Schools	2.86	3.07	3.31	3.55	3.82	4.11	4.41
Other Commercial	3.19	3.43	3.69	3.96	4.26	4.58	4.92
Mixed Use	4.17	4.48	4.82	5.18	5.57	5.99	6.44
Annual WW Service Standby Charge	80.00	80.00	80.00	80.00	80.00	80.00	80.00
Sewer Lateral Maintenance Fee (Monthly)	1.10	1.18	1.27	1.37	1.47	1.58	1.70
Public Outreach/Educational Items (No Charge)					N/A	N/A	N/A
*The New Service Rate is the sewer rate charged to all new residential sewer services. This rate is based on the average 2006 January / February residential water usage which is 231 gpd.							

ATTACHMENT 2
PROFESSIONAL SERVICES AGREEMENT

**AGREEMENT FOR PROFESSIONAL SERVICES FOR PREPARATION OF COMPREHENSIVE
WATER AND WASTEWATER (INCLUDING NONPOTABLE WATER) RATE AND USER FEE STUDIES
[Name of Consultant]**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____ by and between the City of Brentwood, a municipal corporation of the State of California ("City"), and _____, a _____ ("Consultant") (each a "Party" and collectively, the "Parties").

RECITALS

A. City does not have available personnel specifically trained and experienced to perform the special services required and requires the professional services of a consultant that is experienced in preparation of Comprehensive Water and Wastewater (including Nonpotable Water) Rate and User Fee Studies.

B. Consultant has the necessary professional skills and experience necessary to perform the services described in this Agreement.

C. City desires to engage Consultant to provide these services by reason of its qualifications and experience in performing such services

D. Consultant has submitted a proposal to City and has affirmed its willingness and ability to perform such work on the terms and manner set forth in this Agreement.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work.

1.1 City retains Consultant to perform, and Consultant agrees to render, those services (the "Services") that are described in the attached Exhibit "A," which is incorporated by this reference, pursuant to this Agreement's terms and conditions.

1.2 Consultant will be responsible for the professional quality, technical accuracy and coordination of the Services. Consultant will, without additional compensation, correct or revise any errors or deficiencies in the Services.

1.3. Consultant will keep City informed on a regular basis that the Services are being performed in accordance with the requirement and intentions of this Agreement.

1.4 If applicable, Consultant has designated those persons listed in Exhibit "A" to provide the Services to the City. Consultant will not change or reassign those persons described in Exhibit "A" without prior written notice to City, and will not replace those individuals with individuals to whom City has a reasonable objection.

2. Standard of Performance. Consultant acknowledges that in entering into this Agreement the City is relying on Consultant's special skills and experience to do and perform the Services in accordance with best standards of professional practice. While performing the Services, Consultant will exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Northern California area. The acceptance of the Services by City does not release Consultant from these obligations.

Consultant will be responsible for employing or engaging all persons necessary to perform the Services. All of Consultant's staff will be qualified by training and experience to perform their assigned tasks. Consultant will give its personal attention to the fulfillment of the provisions of this Agreement by all of its

employees and subcontractors, if any, and will keep the Services under its control. On demand of City, if any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, he or she will be discharged immediately from the Services.

3. Term. Unless earlier terminated, the term of this Agreement will commence upon the date first above written and will expire upon completion of the Services by Consultant.

4. Schedule. Consultant will generally adhere to the schedule set forth in Exhibit "A" provided, that City will grant reasonable extensions of time for the performance of the Services occasioned by unusually lengthy governmental reviews of Consultant's work product or other unavoidable delays occasioned by unforeseen circumstances; provided, further, that such unavoidable delay will not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees.

Consultant acknowledges the importance to City of City's project schedule and agrees to put forth its best professional efforts to perform the Services in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound practices. Consultant will work such overtime or engage such personnel and equipment as necessary to maintain the schedule, without additional compensation.

5. Compensation.

5.1 The total fee payable for the Services to be performed during the term of this Agreement will be a not to exceed amount of _____ dollars (\$_____) as may be further specified in the attached Exhibit "A." No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. The City reserves the right to withhold a ten percent (10%) retention until City has accepted the Services.

5.2 Payment will occur only after receipt by City of invoices sufficiently detailed to include hours performed, hourly rates, and related activities and costs for approval by City.

5.3 Within thirty (30) days after receipt of any applicable progress payment request, City will verify the accuracy of the request, correct the charges where appropriate, and make payment to Consultant in an amount equal to the amount of such application, as verified or corrected by City. No payment made prior to completion and acceptance of the Services will constitute acceptance of any part of the Services. City reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant's performance of Services, or other defaults hereunder.

6. Status of Consultant. Consultant will perform the Services in Consultant's own way and pursuant to this Agreement as an independent contractor and in pursuit of Consultant's independent calling, and not as an employee of City. The persons used by Consultant to provide the Services under this Agreement will not be considered employees of City for any purposes.

The payment made to Consultant pursuant to the Agreement will be the full and complete compensation to which Consultant is entitled. City will not make any federal or state tax withholdings on behalf of Consultant or its agents, employees or subcontractors. City will not pay any workers' compensation insurance, retirement contributions or unemployment contributions on behalf of Consultant or its employees or subcontractors. Consultant agrees to indemnify and pay City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Consultant or any agent, employee, or contractor of Consultant for work done under this Agreement. At the City's election, City may deduct the amounts paid pursuant to this Section, from any balance owing to Consultant.

7. Subcontracting. Consultant's services are unique and personal. Except as may be specified in Exhibit "A", Consultant will not subcontract any portion of the Services without prior written approval of

City Manager or his/her designee. If Consultant subcontracts any of the Services, Consultant will be fully responsible to City for the acts, errors and omissions of Consultant's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Consultant and City. Consultant will be responsible for payment of subcontractors. Consultant will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

8. Other Consultants. The City reserves the right to employ other consultants in connection with the Services.

9. Indemnification. Consultant will hold harmless, defend and indemnify City, its officers, agents, volunteers and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of this Agreement, caused in whole or in part by any act or omission of the Consultant, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of City.

10. Insurance. Consultant will obtain and maintain, at its cost and expense, for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Consultant or Consultant's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:VII."

10.1 Coverages and Limits. Consultant will maintain the types of coverages and minimum limits indicated below, unless Risk Manager or City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Consultant's indemnification obligations under this Agreement. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. The coverage will contain no special limitations on the scope of its protection to the above-designated insureds except for Workers Compensation and errors and omissions insurance. Consultant will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage. If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage, as Consultant deems adequate, at Consultant's sole expense.

10.1.1 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

10.1.2 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

10.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Consultant has no employees and provides, to City's satisfaction, a declaration stating this.

10.1.4 Professional Liability. Errors and omissions liability appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim.

10.2 Endorsements. For Commercial General Liability Insurance and Automobile Liability Insurance, Consultant will ensure that the policies are endorsed to name the City, its officers, agents,

volunteers and employees as additional insureds. Prior to City's execution of this Agreement, Consultant will furnish certificates of insurance and endorsements to City.

10.3 Cancellation. Insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent pursuant to the notice provisions of this Agreement.

10.4 Failure to Maintain Coverage. If Consultant fails to maintain any of these insurance coverages, then City will have the option to declare Consultant in breach of this Agreement, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Consultant is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Consultant or deduct the amount paid from any sums due Consultant under this Agreement.

10.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

10.6 Primary Coverage. For any claims related to the Services and this Agreement, the Consultant's insurance coverage will be primary insurance with respect to City, its officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City for itself, its officers, agents, volunteers and employees, will be in excess of Consultant's insurance and not contributory with it.

10.7 Reduction in Coverage/Material Changes. Consultant will notify City in writing pursuant to the notice provisions of this Agreement thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this Agreement or any material changes to the respective insurance policies.

10.8 Waiver of Subrogation. The policies shall contain a waiver of subrogation for the benefit of City.

11. Business License. Consultant will obtain and maintain a City of Brentwood Business License for the term of the Agreement, as it may be amended from time-to-time.

12. Maintenance of Records. Consultant will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Consultant will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Consultant will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

13. Ownership of Documents.

13.1 All product produced by Consultant or its agents, employees, and subcontractors pursuant to this Agreement (the "Work Product") is the property of City. In the event this Agreement is terminated, all Work Product produced by Consultant or its agents, employees and subcontractors pursuant to this Agreement will be delivered to City pursuant to the termination clause of this Agreement. Consultant will have the right to make one (1) copy of the Work Product for Consultant's records.

13.2 The Work Product may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable, without further employment of or payment of any compensation to Consultant; provided, however, that if this Agreement is terminated for any reason prior to completion of the Project and if under such circumstances City uses, or engages the services of and directs another consultant to use, the Work Product, City agrees to hold Consultant harmless from any and all liability, costs, and expenses relative to claims arising out of matters and/or events which occur subsequent to the termination of this Agreement as a result of causes other than the fault or negligence of Consultant, or anyone for whose acts it is responsible, in preparation of the Work Product. Consultant will not be responsible for deficiencies solely attributable to modifications of

the Work Product performed by others, or that arise from use of the Documents in connection with a project or site other than that shown in the Work Product.

14. Copyrights. Consultant agrees that all copyrights that arise from the Services will be vested in City and Consultant relinquishes all claims to the copyrights in favor of City.

15. Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of the Services pursuant to the Agreement are confidential until released by the City to the public, and the Consultant will not make any of these documents or information available to any individual or organization not employed by the Consultant or the City without the written consent of the City before any such release.

16. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, by facsimile or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Brentwood
150 City Park Way
Brentwood, CA 94513
Phone No. (925) 516-5420
Facsimile No. (925) 516-5421
Attn: Miki Tsubota

For Consultant:

Name: _____
Title: _____
Address: _____

Phone No.: _____
Facsimile No.: _____
Attn: _____

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

17. Conflicts of Interest.

17.1 City will evaluate Consultant's duties pursuant to this Agreement to determine whether disclosure under the Political Reform Act and City's Conflict of Interest Code is required of Consultant or any of Consultant's employees, agents, or subcontractors. Should it be determined that disclosure is required, Consultant or Consultant's affected employees, agents, or subcontractors will complete and file with the City Clerk those schedules specified by City and contained in the Statement of Economic Interests Form 700.

17.2 Consultant understands that its professional responsibility is solely to City. Consultant warrants that it presently has no interest, present or contemplated, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Consultant further warrants that neither Consultant, nor Consultant's agents, employees, subcontractors and consultants have any ancillary real property, business interests or income that will be affected by this Agreement or, alternatively, that Consultant will file with the City an affidavit disclosing this interest. Consultant will not knowingly, and will take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If after employment of a person, Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant will promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

18. General Compliance with Laws. Consultant will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of the Services by Consultant. Consultant will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of the Services with all applicable laws, ordinances and regulations.

19. Discrimination and Harassment Prohibited. Consultant will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

20. Termination. In the event of the Consultant's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Consultant in writing pursuant to the notice provisions of this Agreement. Consultant has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Consultant has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement. In the event City elects to terminate, City will have the right to immediate possession of all Work Product and work in progress prepared by Consultant, whether located at the project site, at Consultant's place of business, or at the offices of a subconsultant.

Either Party, upon tendering thirty (30) calendar days written notice to the other Party, may terminate this Agreement for convenience. In this event and upon request of City, Consultant will assemble the work product without charge and put it in order for proper filing and closing and deliver it to City. Consultant will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

21. Covenants Against Contingent Fees. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to terminate this Agreement for nonperformance, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. Claims And Lawsuits. By signing this Agreement, Consultant agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Consultant acknowledges that if a false claim is submitted to City by Consultant, it may be considered fraud and Consultant may be subject to criminal prosecution. Consultant acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act, applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Consultant acknowledges that the filing of a false claim may subject Consultant to an administrative debarment proceeding as the result of which Consultant may be prevented to act as a Consultant on any public work or improvement for a period of up to five (5) years. Consultant acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

23. Jurisdiction, Venue and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This agreement will be governed by the laws of the State of California.

24. Testimony. Consultant will testify at City's request if litigation is brought against City in connection with Consultant's services under this agreement. Unless the action is brought by Consultant, or is based upon Consultant's actual or alleged negligence or other wrongdoing, City, upon prior written

agreement with Consultant will compensate Consultant for time spent in preparation for testimony, testimony, and travel at Consultant's standard hourly rates at the time of actual testimony.

25. Successors and Assigns. It is mutually understood and agreed that this Agreement will be binding upon the Parties and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Consultant without the prior written consent of City, which will not be unreasonably withheld.

26. Section Headings. Section headings as used in this Agreement are for convenience only and will not be deemed to be a part of such sections and will not be construed to change the meaning of the section.

27. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

28. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. The City Manager is authorized, in consultation with the City Attorney, to agree to non-material amendments to this Agreement. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

29. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Agreement.

30. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

CONSULTANT:

CITY:

* By: _____

By: _____

Paul R. Eldredge, City Manager

Printed Name: _____

Title: _____

ATTEST:

** By: _____

By: _____

Margaret Wimberly, City Clerk

Printed Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Damien Brower, City Attorney

If required by City, proper notarial acknowledgment of execution by Consultant must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

***Group A.**

Chairman,
President, **or**
Vice-President

****Group B.**

Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

EXHIBIT “A”

SCOPE OF SERVICES

Itemized List of what Consultant will do for City and at what price and schedule and name(s) of designated persons.